CT State Labor & Public Employees Committee

Re: SB101 – "An Act Concerning Worker's Compensation Insurance and Sole Proprietors".
Dear State Legislators:

I am unable to attend the hearing, otherwise I would try to explain it because it's seems complex to most other than insurance advisors.

1. Sole proprietors and now single-member LLC's don't fall within the workers compensation law, therefore they have no duty to insure for workers comp for themselves. If they have an employee other than themselves, they need to purchase workers comp. To be covered by the law, a sole proprietor must voluntarily INCLUDE themselves by electing the coverage. Each job classification has its own rate. If a sole proprietor roofer elected coverage for himself, his annual premium charge would be about $30,000. A sole proprietor carpenter would be about $15,000.
2. General Contractors hiring any of these employees as a subcontractor will request an Acord 25 – Certificate of Liability Insurance that reads that the sub has General Liability Insurance AND Workers comp – no exceptions
3. The Acord25 if set aside with the contract for the General Contractor's insurance carrier's auditor. Because the auditor sees the worker's comp insurance information listed, he does not include the amount paid to the sub when figuring payroll for the worker's comp premium basis.
4. As demonstrated by the above example, for a one-man operation who has no employees, to purchase coverage which actually covers the sub, depending on the job class, it can be prohibitively expensive.
5. Because sole proprietors, single member LLC and sole employee corporation executives who choose to file an exclusion to exempt themselves from the law, there should be no reason to purchase the workers compensation.
6. What the main argument is here is that these individual are being told by the GC they must carry workers comp in order to work for the contractors they are subbing for.
7. Instead of actually including themselves so that they are covered, which is what the contractor's insurance carrier expects, the routine purchase for the subcontractor is a dummy policy. The policy does not cover the proprietor, it covers his employees if he has them, but he doesn't, he works alone That dummy policy costs the same fixed cost - $1,500 for each coverage year. It covers no one. Its sole purpose is to show up on the Acord 25 to mislead the Contractor's auditor into believing the sole proprietor has coverage, when he in fact is not covered because he as a sole proprietor is not covered by the law. There is no payroll basis assigned to the Dummy Policy. It shows zero dollars. The $1,500 charged for the policy is the cost of doing business for the sole proprietor – a tax to play so-to-speak
8. The dummy policy, also known as an "if any" policy or a "ghost" policy is a sham. It represents coverage that does not exist. It lies to the contractors insurer that the sole proprietor is covered for workers compensation when he/she is not. Coverage would only exist to cover the sole proprietor's employees if he has any, but then it would have actual payroll assigned to the class and the proper premium charged for the risk exposure.
9. Without that dummy coverage, however, the contractor's auditor will chard the contractor additional premium on the contractor's worker's compensation to pick up the sole proprietor as if he were an employee.

10. Sole proprietors and single member LLC are not covered by the law, therefore should not be required to purchase workers comp to begin with. To purchase REAL coverage – so as to actually insure the sole proprietor by the proprietor electing coverage and filing the form of inclusion, it could be very expensive.
11. Those subs who if they actually purchased coverage the way it's supposed to be, in the case of the roofer for $30,000, they would be competing against those roofers who bought the dummy policy misrepresenting coverage, for the $1,500 price that is the minimum manual writing premium for an "if any" policy.
12. At the end of the policy, with the "if any" policy remains at $0 payroll, the roofer with no employees would receive a refund of about $900 of that $1,500 because he had no employees and didn't elect to be included. The roofer who actually covered himself and paid the premium based on the fixed payroll figure of $61,200, after audit showing no other employee payroll, he would be even-steven – he paid $30,000, the true price of his risk exposure.

The objection in the marketplace is that if the subs, instead of deceiving the contractor's auditor with a dummy policy actually paid for the risk they bring to the contractor, it would put many of them out of business. It surely would increase contract costs that would have to be shifted to the top of the food chain, but the way it's being done now is a sham. Th e contractor's insurer is assuming risk for which they believe thay have transferred to the subs insurer, when in fact the risk still remains except that the contractor's insurance is being hoodwinked so they don't charge the contractor for having an uninsured subcontractor on the contractor's workers comp policy. The ghost policy covers NOTHING. It's a charitable contribution to the insurance industry, and it's a tax to do business.

The reason why I say it's a tax to do business is because it can be easily demonstrated that the sub is NOT an employee. 1.) Subs usually have their own business name; employees do not. 2.) Subs usually do work for various competing contractors in the marketplace, employees do not. 3.) Subs usually have their business names out in the marketplace representing the work they do – on business cards, in advertisements, by sponsoring little league teams, etc.; employees do not have their own business name when they are an employee. 4.) Subs are usually listed in various directories and on social media site advertising their services separate from those they subcontract for; employees work for a contractor who has their names listed. 5.) Subs set their own hours; employees cannot. 6.) Subs have a contract for each project they work on; employees do not.. 7.) Sole proprietor subs purchase General Liability insurance and send their contractor an Acord 25 listing the contractor as the Certificate Holder; employees are covered under the contractors General Liability insurance, and there is a premium charged against the employees earned pay.

In the case of a sole proprietor or single member LLC subcontractor, the contractor's auditor should be required to recognize that the sole proprietor or single member LLC is not covered by the law, therefore is exposing the contractor to NO RISK. It should also be noted that if a corporate officer has filed a 6B Exclusion, his work should also be exempt because he has elected to exclude himself from the law. There should be no requirement to purchase comp for any one-man sub who is not included in the law – real, or sham policy. The contractor's auditor should be forced to recognize that the law doesn't require the coverage on sole proprietors, single member LLC or one-man corporate officers who exclude. It is easily discovered whether they

should be by doing some rudimentary research – checking with the CT Workers Comp Commissioner's office to see what kind of filings are made for each risk – they have no problem finding them otherwise; and checking the CONCORD website to see what sort of entity they are filed under. It's not hard to discover – we do this with every risk we insure in advance of placing it.

The burden to verify should be placed on the insurance company's auditors, not on the contractor, not on the sole proprietor, and not on the insurance agent to write a phony insurance policy to scam the auditor. Every time I write a fake policy it costs me money. I get paid up front a measly $60. Out of that $60 I'm am only borrowing $40 which I will have to pay back when the subcontractor gets his refund for having no employees.

This isn't just for public works, it's for every type of work in both the public and private sector. It doesn't matter what kind of work you are doing. You can be a consultant or an interior decorator; as long as you a working beneath a contractor this fake policy it added to the list of requirements, and the only way to end the sham is to change the wording in the statute to end the practice of insurance companies charging for subs who are not covered by the worker's comp law, who are easily proven not employees of the contractor/general contractor.

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